

1. Definitions

- 1.1 "Company" shall mean Engrit Manufacturing & Sales Pty Limited and its successors and assigns.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client if a Limited Liability Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Company to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Company to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Company and the Client subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Company from the Client for the supply of Goods and/or the Client's acceptance of Services and/or Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Company.
- 2.4 None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.

3. Goods

- 3.1 The Goods shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Company to the Client.

4. Price And Payment

- 4.1 At the Company's sole discretion;
 - (a) The Price shall be the Company's current price at the date of delivery of the Goods according to the Company's current Price list; or
 - (b) The Price shall be as indicated on invoices provided by the Company to the Client in respect of Goods supplied; or
 - (c) The Price of the Goods shall, subject to clause 4.2, be the Company's quoted Price, which shall be binding upon the Company provided that the Client shall accept in writing the Company's quotation within thirty (30) days.
- 4.2 The Company may by giving notice to the Client at any time up to seven (7) days before delivery increase the Price of the Goods to reflect any increase in the cost to the Company beyond the reasonable control of the Company, which increase the cost of the Goods/Services by more than 10% of the quoted Price.
- 4.3 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods/Service.
- 4.4 The Company may withhold delivery of the Goods until the Client has paid for them, in which event payment shall be made before the delivery date.
- 4.5 At the Company's sole discretion, for certain approved Clients payment will be due thirty (30) days following the date of the invoice.
- 4.6 Payment will be made by cheque, or by bank cheque, or by direct debit, or by any other method as agreed to between the Client and the Company.
- 4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.

5. Delivery Of Goods / Services

- 5.1 Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Company for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.
- 5.3 The costs of carriage and any insurance which the Client reasonably directs the Company to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.
- 5.4 Where there is no agreement that the Company shall send the Goods to the Client, delivery to a carrier at limited carrier's risk at the expense of the Client is deemed to be delivery to the Client.
- 5.5 The Company may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.6 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.7 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 5.8 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 If the Company retains property in the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Client, the Company is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance

proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

7. Clients Disclaimer

- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Company and the Client acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Company shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Client and shall not be transferable to any subsequent Client.

8. Defects/Return Of Goods

- 8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Company in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery. If the Client shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 8.2 For defective Goods which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods provided that:
 - (a) the Client has complied with the provisions of clause 8.1;
 - (b) the Goods are returned at the Clients cost within seven (7) days of the delivery date;
 - (c) the Company will not be liable for Goods which have not been stored or used in a proper manner;
 - (d) the Goods are returned in as new condition as is reasonable possible in the circumstances.

9. Warranty

- 9.1 Subject to the conditions of warranty set out in Clause 9.2 the Company warrants that if any defect in any workmanship manufactured by the Company becomes apparent and is reported to the Company within twenty four (24) months of the date of delivery (time being of the essence) then the Company will (at the Company's sole discretion) repair the defect or replace the workmanship.
- 9.2 The conditions applicable to the warranty given by Clause 9.1 are:
 - (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - i) Failure on the part of the Client to properly maintain any Goods; or
 - ii) Failure on the part of the Client to follow any instructions or guidelines provided by the Company; or
 - iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
 - iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - v) Fair wear and tear, any accident or act of God.
 - (b) The warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Company's consent.
 - (c) In respect of all claims the Company shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Clients claim.

- 9.3 For Goods not manufactured by the Company the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.

10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 10.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. Intellectual Property

- 11.1 Where the Company has designed or drawn Goods for the Client, then the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by the Client at the Company's discretion.
- 11.2 Conversely, in such a situation, where the Client has supplied drawings, the Company in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Company). Where any designs or specifications have been supplied by the Client for manufacture by or to the order of the Company then the Client warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

12. Default & Consequences Of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company from and against all the Company's costs and disbursements including on a solicitor and own Client basis and in addition all of EC Credit Control Pty Ltd's costs of collection.
- 12.3 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Client and any of

- its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company exercised its rights under this clause.
- 12.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;
- then without prejudice to the Company's other remedies at law
- (i) the Company shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Company shall, whether or not due for payment, immediately become payable.
- 13. Title**
- 13.1 It is the intention of the Company and agreed by the Client that property in the goods shall not pass until
- (n) The Client has paid all amounts owing for the particular Goods, and
 - (o) The Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Company shall have received payment and all other obligations of the Client are met.
- 13.2 It is further agreed that:
- (o) The Client shall not deal with the money of the Company in any way which may be adverse to the Company.
 - (p) Until such time as ownership of the Goods shall pass from the Company to the Client the Company may give notice in writing to the Client to return the Goods or any of them to the Company. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
 - (q) If the Client fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (r) Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership of rights in respect of the Goods shall continue.
 - (s) The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company.
 - (t) The Company may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Company arising out of these terms and conditions, and the Company may take any lawful steps to require payment of the amounts due and the Price.
 - (u) The Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
 - (v) Until such time the Client has the Company's authority to convert the goods into other products and if the goods are so converted, the parties agree that the Company will be the owner of the end products.
- 14. Security And Charge**
- 14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Company may have howsoever:
- (a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own Client basis.
 - (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Company or the Company's nominee, namely EC Credit Control Pty Limited as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Company and/or EC Credit Control Pty Limited shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of the Company and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to the Company and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 15. Cancellation**
- 15.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 16. Privacy Act 1988**
- 16.1 The Client and/or the Guarantor/s agree for the Company to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Company.
- 16.2 The Client and/or the Guarantor/s agree that the Company may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by Client;
 - (b) To notify other credit providers of a default by the Client;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
 - (d) To assess the credit worthiness of Client and/or Guarantor/s.
- 16.3 The Client consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Client agrees that Personal Data provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Client and Company or required by law from time to time:
- (a) provision of Services & Goods;
 - (b) marketing of Services and or Goods by the Company, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services/Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services and Goods.
- 16.5 The Company may give, information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 17. Unpaid Companies Rights To Dispose Of Goods**
- 17.1 In the event that:
- (a) the Company retains possession or control of the Goods; and
 - (b) payment of the Price is due to the Company; and
 - (c) the Company has made demand in writing of the Client for payment of the Price in terms of this contract; and
 - (d) the Company has not received the Price of the Goods,
- then, whether the property in the Goods has passed to the Client or has remained with the Company, the Company may dispose of the Goods and may claim from the Client the loss to the Company on such disposal.
- 18. Lien & Stoppage in Transit**
- 18.1 Where the Company has not received or been tendered the whole of the price, or the payment has been dishonoured, the Company shall have:
- (a) a lien on the goods;
 - (b) the right to retain them for the price while the Company is in possession of them;
 - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale,
 - (e) the foregoing right of disposal,
- provided that the lien of the Company shall continue despite the commencement of proceedings or judgement for the price having been obtained.
- 19. General**
- 19.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 All Services/Goods supplied by the Company are subject to the laws of Victoria and the Company takes no responsibility for changes in the law which affect the Services/Goods supplied.
- 19.3 The Company shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions.
- 19.4 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Goods.
- 19.5 The Client shall not set off against the Price amounts due from the Company.
- 19.6 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.7 The Company reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Client of such change.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.